

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES L. LEE, SR.)	
Claimant)	
VS.)	
)	Docket Nos. 219,705 & 222,620
MIDWEST CONVEYOR COMPANY, INC.)	
Respondent)	
AND)	
)	
INSURANCE CO. STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the October 7, 1998 Award entered by Administrative Law Judge Steven J. Howard. The Appeals Board heard oral argument in Kansas City, Kansas, on April 20, 1999.

APPEARANCES

James E. Martin of Overland Park, Kansas, appeared for the claimant. Michael H. Stang of Overland Park, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

Docket No. 219,705 is a claim for bilateral carpal tunnel syndrome that developed as a result of repetitive traumas sustained between November 18, 1994, and November 1, 1996. The Judge found that Mr. Lee had a 17 percent whole body functional impairment due to the arm injuries and awarded him permanent partial general disability benefits based upon that rating.

Respondent and its insurance carrier contend the Judge erred by adopting the functional impairment rating provided by the doctor the Judge appointed to do an independent medical evaluation. They argue that in this claim Mr. Lee should receive benefits for a “scheduled” injury to the left arm only for a 26 percent functional impairment to that arm. Conversely, Mr. Lee argues that the permanent partial general disability rating should be increased, if it is changed at all.

Docket No. 222,620 is a claim for an upper back and neck injury that allegedly occurred on March 24, 1997. The Judge found that Mr. Lee strained his right trapezius muscle and awarded him a 4 percent permanent partial disability for a “scheduled” injury to the right shoulder.

Again, respondent and its insurance carrier contend the Judge erred. In their reply brief filed with the Appeals Board, they argue that Mr. Lee should be awarded a 2 percent permanent partial general disability for the back injury. Conversely, Mr. Lee argues that he injured his neck or upper back in this accident and should receive an award for a 10 percent permanent partial general disability.

In both claims, the issues before the Appeals Board are:

1. What is the nature and extent of injury and disability?
2. Should the award be reduced for preexisting impairment?

DOCKET NO. 219,705

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. The parties stipulated that Mr. Lee sustained personal injury by accident arising out of and in the course of his employment with Midwest Conveyor Company, Inc., between November 18, 1994, and November 1, 1996. During that period, Mr. Lee worked for Midwest Conveyor as a welder and fitter and began experiencing symptoms first with his left hand, which is his dominant hand, and then his right.
2. Eventually Mr. Lee obtained medical treatment from board certified plastic and reconstructive surgeon Joseph R. Barnthouse, M.D. The doctor first saw Mr. Lee on December 6, 1996. At that time, Mr. Lee complained of symptoms in both hands, the left worse than the right. On January 14, 1997, the doctor operated on Mr. Lee’s left wrist for carpal tunnel syndrome. After several weeks recuperating, Mr. Lee returned to work with Midwest in early March.

3. Dr. Barnthouse did not treat Mr. Lee's right hand. The doctor testified that after their first appointment, except for an appointment on April 30, 1997, Mr. Lee did not mention the right hand again. Mr. Lee testified that because of the unsuccessful surgery on the left hand and wrist he did not want surgery on his right.

4. Dr. Barnthouse believes Mr. Lee has a 26 percent functional impairment to the left upper extremity. The doctor did not rate the right upper extremity. But he agrees that Mr. Lee has entrapment neuropathy in the right arm based upon EMG and nerve conduction studies that were completed in November 1996. According to those studies, Mr. Lee had mild bilateral carpal tunnel syndrome with the entrapment neuropathy in the left worse than the right. Assuming the EMG studies were accurate, Dr. Barnthouse testified that the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides) would rate the functional impairment in the right upper extremity at 10 percent.

5. Terrence Pratt, M.D., who is board certified in physical medicine and rehabilitation, examined Mr. Lee on May 30, 1997. The insurance carrier selected his clinic to treat the upper back and shoulder symptoms that Mr. Lee experienced after the March 24, 1997 work-related accident that is the subject of Docket No. 222,620.

6. Dr. Pratt diagnosed carpal tunnel syndrome on the left but not the right. Although the doctor believes that he would have examined both hands and wrists, his notes do not mention or confirm that he examined or even looked at the right. The doctor testified that when they last met on June 17, 1997, Mr. Lee complained of symptoms suggesting carpal tunnel syndrome in the left arm but none suggesting carpal tunnel in the right. But when asked if he was testifying that Mr. Lee does not have bilateral carpal tunnel syndrome, the doctor stated that he was not. Using the fourth edition of the AMA Guides, the doctor found Mr. Lee had a 2 percent whole body functional impairment for the left carpal tunnel syndrome and right trapezius strain.

7. Orthopedic surgeon Edward J. Prostic, M.D., examined Mr. Lee at his attorney's request in both November 1997 and May 1998. The doctor diagnosed bilateral carpal tunnel syndrome caused by repeated minor traumas to both hands that he related to Mr. Lee's work. Using the fourth edition of the AMA Guides, Dr. Prostic rated Mr. Lee's functional impairment at 20 percent to each arm, which converts to a 23 percent impairment to the body.

8. Because of the different functional impairment opinions, the Judge ordered an independent medical evaluation by orthopedic surgeon Daniel M. Downs, M.D. In his report dated February 10, 1998, the doctor states that Mr. Lee developed bilateral carpal tunnel syndrome because of the heavy and repetitive work that he did for Midwest Conveyor. Also, the doctor states that, as a result of that bilateral carpal tunnel syndrome, Mr. Lee has a 20 percent functional impairment to the left upper extremity and a 10 percent functional impairment to the right upper extremity, which convert to a 17 percent whole

body impairment. The doctor used the fourth edition of the AMA Guides to formulate those ratings.

9. In his report to the Judge, Dr. Downs states that none of the past medical records that he reviewed, nor any of the information that he obtained from Mr. Lee or the examination, indicated that Mr. Lee had an impairment before these injuries.

10. After returning to work for Midwest after surgery, Mr. Lee sustained another work-related accident on March 24, 1997. Since that accident he has retired due to health reasons unrelated to his work-related injuries.

11. Considering the entire record, the Board finds that it is more probably true than not that Mr. Lee's work at Midwest Conveyor caused repetitive traumas to both hands and wrists causing bilateral carpal tunnel syndrome. The Board, finding Dr. Downs' opinions persuasive, affirms the Judge's conclusion that Mr. Lee has a 17 percent whole body functional impairment for the bilateral arm injury.

12. The Board adopts the findings made by the Judge to the extent they are not inconsistent with the above. Also, the Board adopts the findings made in Docket No. 222,620, below.

CONCLUSIONS OF LAW

1. The Award of a 17 percent permanent partial general disability should be affirmed.

2. Because he injured both arms, the computation of permanent partial disability benefits is governed by K.S.A. 1996 Supp. 44-510e, which provides in part:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

3. Because he has retired due to health reasons not associated with his work-related injuries, Mr. Lee is limiting his claim of permanent partial disability benefits to the functional

impairment rating. Therefore, the Board concludes Mr. Lee's permanent partial general disability is 17 percent.

4. Based upon Dr. Downs' testimony, the Board concludes that Mr. Lee did not have a preexisting impairment. Therefore, the award is not reduced.¹

AWARD

WHEREFORE, the Appeals Board affirms the October 7, 1998 Award entered in Docket No. 219,705 by Judge Steven J. Howard.

DOCKET No. 220,620

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. As indicated above, in early March 1997 Mr. Lee returned to work for Midwest Conveyor after recovering from the January 1997 carpal tunnel surgery. He alleges that he had another work-related accident and injured his neck and upper back on March 24, 1997, while lifting oil pans.
2. The parties stipulated that Mr. Lee sustained personal injury by accident arising out of and in the course of his employment on the date alleged.
3. The principal issue in this claim is whether Mr. Lee injured his right shoulder musculature or if he also injured either his neck or upper back.
4. Dr. Barnthouse was treating Mr. Lee for left carpal tunnel syndrome and resulting surgery when the March 24, 1997 accident occurred. The doctor testified that Mr. Lee reported a shoulder injury but he did not complain of neck symptoms.
5. As indicated above, Dr. Pratt believes Mr. Lee has a 2 percent whole body functional impairment for the left carpal tunnel syndrome and right trapezius strain. But the doctor did not provide an opinion of whether the trapezius strain involved only the shoulder musculature or whether it also should be considered an injury to the upper back or neck.
6. Dr. Prostic testified that Mr. Lee injured both his neck and right shoulder in the lifting incident. The doctor stated that Mr. Lee had rotator cuff tendonitis in the shoulder and that he had aggravated degenerative disc disease in the cervical spine. He rates Mr. Lee's functional impairment for the shoulder and neck at 10 percent to the body.

¹ See K.S.A. 1996 Supp. 44-501(c).

7. Dr. Downs, the physician selected by the Judge to evaluate Mr. Lee, states in his February 1998 report that Mr. Lee has a 2 percent whole body functional impairment as a result of the right trapezius muscle strain. The doctor did not testify and his report does not address the issue whether Mr. Lee's trapezius strain should be considered an injury to the shoulder musculature or an injury to the upper back or neck.

8. The Judge found that Mr. Lee injured his right shoulder in the March 24, 1997 accident and awarded him benefits under the "scheduled" injury statute.² The Appeals Board affirms that finding. The Board is persuaded by Dr. Barnthouse's testimony that Mr. Lee did not have any neck complaints when the doctor saw him in late March and April 1997. Further, the Board is persuaded by Dr. Pratt's testimony that he did not find any permanent functional impairment in Mr. Lee's cervical spine.

9. The Judge, persuaded by Dr. Downs' functional impairment opinion, found that Mr. Lee had a 2 percent whole body functional impairment as a result of the right trapezius strain. The Judge then converted that rating to a 4 percent functional impairment to the upper extremity. As that conversion is consistent with the fourth edition of the AMA Guides, the Board adopts that finding as its own.

10. The Appeals Board adopts the findings and conclusions made in Docket No. 219,705, above. Also, the Board adopts the findings set forth in the Award to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

1. The Award of a 4 percent permanent partial disability for a right shoulder injury should be affirmed.

2. The Appeals Board concludes that Mr. Lee has sustained an injury to the right shoulder musculature. He has not proven that he sustained injury to his back or neck. Therefore, Mr. Lee is entitled to receive permanent partial disability benefits for a "scheduled" injury. K.S.A. 44-510d provides in part:

If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule: . . .

(13) For the loss of an arm, excluding the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 210 weeks,

² K.S.A. 1996 Supp. 44-510d.

and for the loss of an arm, including the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 225 weeks.

3. A worker is entitled to a maximum of 225 weeks of permanent partial disability benefits for the loss of an arm and a shoulder. As provided by regulation,³ after subtracting .71 weeks of temporary total disability benefits from 225 the resulting number is multiplied by the 4 percent functional impairment rating to yield 8.97 weeks of permanent partial disability compensation that Mr. Lee is entitled to receive as a result of the shoulder injury.

4. Again, based upon Dr. Downs' opinions, the Board finds that Mr. Lee did not have an impairment in his shoulder before the March 24, 1997 accident. Therefore, the award for this shoulder injury is not reduced pursuant to K.S.A. 44-501(c).

AWARD

WHEREFORE, the Appeals Board affirms the October 7, 1998 Award entered in Docket No. 222,620 by Judge Steven J. Howard.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Michael H. Stang, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

³ K.A.R. 51-7-8.